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(IC 3708)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OMAR HERNANDEZ

Plaintiff,

-v-

COMPLAINT AND
DEMAND FOR
JURY TRIAL

14 CV

CITY OF NEW YORK, OFF. MICHAEL DETERLIZZI
(Shield No. 01389), OFF. JOHN AND JANE DOES,
POLICE OFFICERS FOR THE CITY OF NEW YORK,
INDIVIDUALLY AND AS POLICE OFFICERS FOR
THE CITY OF NEW YORK,
Defendants

INTRODUCTION

1. This is an action for damages for the wrongful acts of defendants NEW YORK CITY and OFF. MICHAEL DETERLIZZI, OFF. JOHN and JANE DOES of the New York City Police Department, all acting under color of state law and pursuant to their authority, in violation of plaintiff's rights under the Constitution and laws of the United States and the State of New York.

2. Plaintiff Omar Hernandez alleges that beginning on or about November 13, 2012, defendants committed wrongful and illegal acts against Plaintiff by assaulting him, using excessive force in arresting him, and violating his Federal and New York State civil rights.

JURISDICTION

3. This action is brought under 42 U.S.C. Section 1983 in conjunction with the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, and the constitutional, statutory and common laws of New York State.

4. Jurisdiction is invoked herein pursuant to the aforementioned statutory and constitutional provisions and pursuant to 28 U.S.C. Section 1331 and 1343, this being an action seeking redress for the violation of the plaintiff's constitutional and civil rights.

5. Plaintiff further invokes this Court's pendant jurisdiction over any and all state law claims and causes of action which derive from the same nucleus of operative facts that give rise to the federally based claims and causes of action, pursuant to Title 28, U.S.C. Section 1367.

6. Venue is laid within the United States District Court for the Southern District of New York in that the actions complained of occurred in the Southern District of New York.

TRIAL BY JURY

7. Plaintiff demands a trial by jury on each and every one of his claims as pled herein.

PARTIES

8. At all times relevant hereto, plaintiff OMAR HERNANDEZ was a resident of the Bronx, New York.

9. At all times relevant hereto, defendant NEW YORK CITY was and is a municipality of the State of New York and owns, operates, manages, directs and

controls the New York City Police Department, which employs the other named defendants.

10. Defendant MICHAEL DETERLIZZI is and was at all times relevant to this action a police officer, employed by the New York City Police Department, and acting under color of state law. He is being sued in both his individual and official capacities.

11. Defendants JOHN and JANE DOES are and were at all times relevant to this action police officers, employed by the New York City Police Department, and acting under color of state law. They are being sued in both their individual and official capacities.

12. At all times relevant hereto and in all their actions described herein, defendants MICHAEL DETERLIZZI, JOHN and JANE DOES were acting under color of the statutes, ordinances, regulations, policies, customs and usages of the New York City Police Department and New York City, pursuant to their authority as employees, servants and agents of the New York City Police Department, within the scope of employment and incidental to their otherwise lawful duties and functions as employees, servants, agents and police officers.

13. The conduct and injuries complained of herein ensued without any negligent or culpable conduct on the part of the plaintiff.

NOTICE OF CLAIM

14. On February 13, 2013, plaintiff Hernandez's Notice of Claim was filed with the Comptroller's Office of the City of New York. More than thirty days have elapsed since the filing of the Notice of Claim and this matter has not been settled nor otherwise disposed of.

15. On September 11, 2013, a hearing pursuant to New York State General Municipal Law §50-h was held at which time plaintiff Omar Hernandez was questioned by a representative of defendant New York City.

16. The transcript of this hearing is attached hereto as Exhibit A and as factual support for the causes of action alleged herein and is made a part of this Complaint.

FACTUAL BACKGROUND

17. On November 13, 2012, Plaintiff Omar Hernandez was driving a 1996 white Nissan automobile in the Bronx about 2:00 a.m.

18. His girlfriend, Astrid Ruiz, was a passenger in the vehicle.

19. They were coming from a friend's house on East Tremont Avenue.

20. They were on their way home.

21. Plaintiff made a U-turn.

22. The back wheels spun out because he stepped on the gas a little too hard.

23. Plaintiff saw a police car behind him but was not aware that it was intending to pull him over.

24. When Plaintiff saw the patrol car's lights come on, he realized that he was being pulled over.

25. Instead of stopping, Plaintiff kept driving in an attempt to avoid being stopped and getting a ticket.

26. While fleeing, Plaintiff crossed a double yellow line and traveled for one block in the wrong direction.

27. He applied the brakes to make a turn and the car crashed into a concrete barrier.

28. Neither Plaintiff nor Ms. Ruiz was injured in the crash.

29. They both had been wearing their seatbelts.

30. Plaintiff saw a police officer, got down on his hands and knees, put his hands behind his head and waited.

31. Plaintiff did this because he did not want the officer to think he had a weapon or that the officer would encounter any physical resistance.

32. Plaintiff wanted to make sure that the officers knew he was complying.

33. The two male officers approached the Plaintiff.

34. One officer was white (Defendant Deterlizzi), the other was black (name unknown).

35. Off. Deterlizzi grabbed Plaintiff's hands behind his head while he slammed Mr. Hernandez to the ground, apparently using his knee to Plaintiff's back causing Plaintiff's face to hit the ground as his hands were not free to break his fall.

36. While Plaintiff's hands were behind his back, the other officer got on top of Mr. Hernandez and punched him about seven to ten times on Plaintiff's ribs while cursing at Mr. Hernandez.

37. After being cuffed, the other officer kicked Plaintiff in the face, pushed his face into the ground and called Plaintiff a "stupid motherfucker."

38. The same black officer then yanked Mr. Hernandez's college ID off his neck.

39. Plaintiff was put in the police car and taken to the precinct by two other officers.

40. Plaintiff had gashes on his face and was bleeding from his eyebrows.

41. He also suffered a chipped tooth.

42. Photos of the injuries were taken after the event and Mr. Hernandez's release from court.

43. Plaintiff was transported to Central Booking where medical personnel gave first aid including applying bandages on his forehead.

44. Plaintiff was charged with reckless endangerment, reckless driving and unlawful flight.

45. After spending the night in custody, Mr. Hernandez was released and given a return date in court.

46. Upon his release, he went to the emergency room at Albert Einstein Medical Center.

47. To the medical staff there, Mr. Hernandez described the pain in his side, ribs and forehead and pointed out the cuts, gashes and lump on his forehead.

48. X-rays of his side and a CT scan of his head were taken.

49. The CT scan revealed severe mucosal thickening.

50. The pain caused limitations on Mr. Hernandez's mobility that continued for about two months.

51. He has residual scarring and a chipped tooth.

52. The charges were eventually resolved on February 6, 2013 with a guilty plea to reckless driving and a \$200.00 fine.

**COUNT ONE: VIOLATION OF CONSTITUTIONAL RIGHTS
(POLICE OFFICERS)**

53. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-52 of this complaint, as though fully set forth herein.

54. The acts, omissions and conduct of the defendants, all members of the New York City Police Department, and all acting under color of state law, deprived plaintiff of his rights, privileges and immunities under the laws and Constitution of the United States; in particular the rights to be free from excessive force and cruel and unusual punishment and to due process.

55. By these acts, omissions and conduct, these individual defendants have deprived plaintiffs of rights secured by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. Section 1983, for which the defendants are individually liable.

**COUNT TWO: VIOLATION OF CONSTITUTIONAL RIGHTS
(Defendant New York City)**

56. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-55 of this complaint, as though fully set forth herein.

57. The acts, omissions and conduct of defendant New York City, as set forth above, deprived plaintiff of his rights, privileges and immunities under the laws and Constitution of the United States; in particular the rights to be free from excessive force and cruel and unusual punishment and to due process.

58. By these acts, omissions and conduct, defendant New York City has deprived plaintiff of rights secured by the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. Section 1983.

COUNT THREE: CONSPIRACY TO VIOLATE CIVIL RIGHTS

59. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-58 of this complaint as though fully set forth herein.

60. The defendants conspired to violate the plaintiff's civil rights by agreeing between themselves to use excessive force in violation of 42 U.S.C. 1983, for which defendants are individually liable.

COUNT FOUR: ASSAULT

61. Plaintiff repeats and re-alleges the allegations in paragraphs 1-60 of this complaint, as though fully set forth herein.

62. The acts and conduct of defendants, as alleged above, constitute assault under the laws of the State of New York. This Court has pendant jurisdiction to hear and adjudicate such claims.

COUNT FIVE: RESPONDEAT SUPERIOR LIABILITY (Defendant New York City)

63. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-62 of this complaint, as though fully set forth herein.

64. At all times pertinent hereto, defendants were acting within the scope of their employment as officers of the New York City Police Department.

65. Defendant New York City is thus liable under the doctrine of respondeat superior, for the intentional torts of defendants, committed within the scope of their employment.

COUNT SIX: NEGLIGENCE

66. Plaintiff repeats and re-alleges the allegations contained in paragraph 1-65 of this complaint, as though fully set forth herein.

67. The defendant police officers, while acting as agents and employees for New York City, owed a duty to plaintiffs to perform their duties without violating

plaintiff's constitutional rights. Defendants' conduct constitutes negligence for which these defendants are individually liable.

**COUNT SEVEN: NEGLIGENCE
(Defendant New York City)**

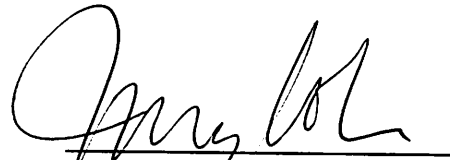
68. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-67 of this complaint, as though fully set forth herein.

69. Defendant New York City owed a duty to plaintiff to adequately screen prospective police officers, and to train, supervise and otherwise control its police officers in the use of their powers incidental to their employment. Defendant New York City failed to provide adequate screening, training, supervision, and control of the individual defendants, which failure constitutes negligence.

WHEREFORE, plaintiff demands the following relief:

- a. Compensatory damages in the amount of one million (\$1,000,000 dollars).
- b. Punitive damages in the amount of one million (\$1,000,000 dollars).
- c. Reasonable attorneys fees and costs; and
- d. Such other and further relief as appears reasonable and just.

Dated: New York, New York
January 31, 2014



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ORIGINAL TRANSCRIPT

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50-H HEARING

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In the Matter of the Claim of

OMAR HERNANDEZ,

-against-

THE CITY OF NEW YORK.

----- x

BLA#: 2013PI004757

160 Broadway
New York, New York

September 11, 2013
1:33 p.m.

EXAMINATION of **OMAR HERNANDEZ**, held at
the above time and place, pursuant to Notice,
taken before Koel Dressman, a reporter and
Notary Public within and for the State of New
York.

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A p p e a r a n c e s :

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BY: FRANCESCA SABBATINO, ESQ., of Counsel

O M A R H E R N A N D E Z, the witness herein,
having first been duly sworn by a
Notary Public of the State of New York,
was examined and testified as follows:

EXAMINATION BY

MS. SABBATINO:

Q State your name for the record,
please.

A Omar Hernandez.

Q State your address for the
record, please.

A 801 Neill Avenue, Bronx, New York
10462.

Q Good afternoon, Mr. Hernandez.
My name is Francesca Sabbatino. I'm an
attorney, and I'm here on behalf of the City
of New York. I'm going to ask you questions
today about the claim that you're bringing.

I have a couple of instructions
for you before we begin. When I ask you a
question, I need you to give me a verbal, a
spoken answer. You can't just nod or gesture
or use a non-word answer like uh-huh. Okay,
you understand?

O. Hernandez

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A I do.

Q Please wait until I finish asking the question completely before you begin the answer. It's very difficult for the court reporter to take down what we're saying if we're talking at the same time.

If I ask you a question you don't understand, if the question is not clear or you're confused by it, it's fine. Just stop me and tell me you don't understand and we'll explain it. Okay?

A Okay.

Q Have you understood the instructions so far?

A Yes, I do.

Q What's your date of birth?

A January 5, 1989.

Q What is your Social Security number?

A 133-74-5519.

Q Are you currently employed?

A No.

Q Have you been employed in the past?

O. Hernandez

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A Yes.

Q When was the last time you
worked?

A The summer, this past summer.

Q How long did you work?

A For the entire summer, starting
June 20th, I believe.

Q Who did you work for?

A Stellar Management.

Q Where is Stellar Management
located?

A The actual management location,
156 William Street.

Q Is that Manhattan?

A Yes.

Q Where did you work?

A 801 Neill Avenue.

Q What did you do at 801 Neill
Avenue?

A I was a lifeguard there.

Q What's located at 801 Neill
Avenue?

A My residence and a swimming pool.

Q Is that a swimming pool that is

O. Hernandez

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part of the residential building?

A Yes.

Q How long have you lived at 801 Neill Avenue?

A Since I was seven-years-old.

Q Have you ever lived at 808 Neill?

A No.

Q Who do you live there with?

A My mother.

Q What's your mother's name?

A Luz Hernandez.

Q Does anyone else live in the household?

A No.

Q Was this a summer job only?

A Yes.

Q Are you in school?

A Yes.

Q Where do you go to school?

A City College.

Q Which one?

A The one in Harlem, the one on Convent Avenue.

Q When did you start going there?

O. Hernandez

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A Two semesters ago, so I would say 2012, the beginning of 2012.

Q When you say the beginning, you mean September 2012 or January 2012?

A September 2011.

Q Is that when you started at City College, in September of 2011? Was that the first post high school education --

A No.

Q Where did you go for post high school education, other than City College?

A Westchester Community College.

Q When did you go there?

A I don't remember the exact dates.

Q How many semesters did you go there for?

A Four, I would say.

Q Did you receive a degree?

A No.

Q What were you studying?

A Computer science.

Q Have you gone to any other post high school schools?

A No.

O. Hernandez

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Q Are you studying anything in particular now at City College?

A In particular, right now at the moment, no, undecided.

Q Are you a full time or part-time student?

A Part time.

Q How many credits do you carry?

A After I left Westchester, I had forty-five. When I transferred to City College I had twenty-seven and now I have, I believe, forty-three.

Q How many credits are you registered for this semester?

A Eight.

Q Did you go to City College for the winter and spring semester of 2013?

A The only semester I missed was last semester.

Q What is last semester, what semester is that?

A That would be the spring.

Q Spring of 2013?

A Yes.

O. Hernandez

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Q Why did you miss spring of 2013?

A I missed the deadline for
registration.

Q Why did you miss the deadline?

A Because I wasn't familiar with
how fast that school fills up classes
compared to Westchester.

Q Do you receive Medicaid?

A Currently, yes.

Q Do you have your card with you?

A No.

MS. SABBATINO: Leave a
space in the record, and I'll ask
that the Medicaid ID number be
provided.

(INSERT)

Q Do you receive Medicare or Social
Security disability?

A No.

Q Do you receive any public
assistance benefits?

A No.

Q When was your last day at work at
Steller Management?

O. Hernandez

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A Labor Day.

Q Does the pool close then?

A Yes.

Q Was it a full-time job?

A Yes, fifty-six hours a week.

Q What was the rate of pay per
hour?

A Fourteen.

Q Were you working anywhere else in
2013, other than the job as the lifeguard?

A No.

Q Did you work anywhere in 2012?

A Yes.

Q Where?

A On the upper east side, it was
called the Claridge Club, with Milford
Management.

Q What did you do at the Claridge
Club?

A Lifeguard and receptionist.

Q When did you work there?

A I would say for about a year, the
year of 2012.

Q Was it full time or part time?

O. Hernandez

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A Part time.

Q Do you receive any public assistance benefits, cash payments, food stamps or anything like that?

A No.

Q What date did this incident happen?

A November 30th.

Q What year?

A 2012.

Q At what time?

A After 2:00 in the morning. I don't remember the exact time.

Q Where did it happen?

A It happened on east -- it's on East Tremont. Well, it started on East Tremont and ended on Pierce Avenue, I believe, or Sackett, it could be Sackett.

Q Where on East Tremont did it start?

A East Tremont and Morris Park, I would say.

Q Were you alone when it started?

A No, I was with my girlfriend.

O. Hernandez

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Q What's your girlfriend's name?

A Astrid Ruiz.

Q What is her address?

A I don't know the number, I don't know the building number.

Q What street is she on?

A Sanford.

Q Is that in the Bronx?

A It's Queens, Flushing.

Q Sanford Avenue?

A Yes.

Q Do you know what cross street on Sanford?

A Parsons Boulevard.

Q Was there anyone else with you?

A No.

Q Where on East Tremont did it begin; in a building, on the road, where?

A On the road.

Q Were you in a vehicle?

A Yes.

Q What kind of vehicle were you in?

A '96, 240SX.

MR. COHEN: It's a Nissan?

O. Hernandez

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THE WITNESS: Nissan.

Q Who was the owner of the vehicle?

A I was.

Q How long had you owned the car?

A About maybe a year or maybe six months.

Q Did you make any modifications to the vehicle?

A No.

Q What color?

A White.

Q Do you still have it?

A No.

Q Where is it?

A It's totaled.

Q When did it get totaled?

A The same night.

Q How did it get totaled?

A You want me to start explaining the story?

Q The totalling of the vehicle is part of the story?

A Yes.

Q We'll try to take it

O. Hernandez

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step-by-step.

Where were you and Astrid coming from?

A A friend's house.

Q What is the name of the friend?

A Sorry, the name of the friend?

Q Yes.

A John.

Q What's John's last name?

A I don't know his last name, it was a mutual friend.

Q Where is John's place?

A It's on East Tremont.

Q Where on East Tremont?

A By Morris Park.

Q Do you have the number of the house anywhere?

A No, I don't.

Q Had you ever been there before?

A No.

Q What time did you arrive at John's house?

A I would say around midnight, 11:00.

O. Hernandez

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Q What was the purpose of going there?

A Astrid had to pick up something from him.

Q Do you know what she had to pick up?

A Something, clothing that his girlfriend had got her or something.

Q Where were you before you went to John's house?

A Home.

Q Was Astrid with you at home?

A No.

Q Had you left the house for any reason that day before you and Astrid left to go to John?

A I don't recall, I don't remember.

Q Did you consume any alcohol within twelve hours before the incident?

A No.

Q Did you take any drugs of any kind within twelve hours before the incident?

A No.

Q Were you taking any medications

O. Hernandez

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at the time the incident happened?

A No.

Q Did you have a driver's license
on the date of this incident?

A Yes.

Q What state is it from?

A New York.

Q Were there any restrictions on
it?

A No.

Q Was it valid on the date of the
incident?

A Yes.

Q Was the vehicle registered?

A Yes.

Q In what state?

A New York.

Q Was the registration valid on the
date of the incident?

A Yes.

Q Was the car insured?

A Yes.

Q Who insured the vehicle?

A My mother.

O. Hernandez

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Q What company?

A I don't know.

Q The title to the car, whose name
is it in?

A Mine, I believe.

Q The registration to the vehicle,
whose name is on the registration?

A I believe mine.

Q Did you have the registration
documents with you at the time of the incident?

A Yes.

Q Where were they?

A In my wallet, I believe.

Q What about the insurance
documents, did you have those with you at the
time of the incident?

A I think everything was in my
wallet.

Q When was the last time before the
incident occurred that the vehicle had been
inspected?

A Small details like this I can't
remember.

Q Was the inspection valid at the

O. Hernandez

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time the incident happened or was it expired?

A It was valid.

Q Did you go into John's apartment
or house with your girlfriend?

A No.

Q Where did you wait?

A Outside.

Q Where outside?

A On East Tremont by Morris Park,
outside of my car, I just waited outside.

Q What were you wearing that night?

A I don't remember.

Q How tall are you?

A 6'1.

Q How much did you weigh at that
time?

A 190.

Q If I were to ask you to describe
your skin complexion, how would you describe
it?

A The actual color?

Q Well, if someone were to ask you
to describe your skin complexion --

A It was the winter time, so I was

O. Hernandez

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a lot paler than this.

Q Would you say you were white
skinned, light skinned?

A White skinned.

Q And you have a bald head; is that
correct?

A Yes.

Q Is that how you were wearing your
hair at that time?

A Yes.

Q Were you wearing a hat or cap
that night?

A I may have had a winter cap on.

Q Like a knitted cap?

A Like a beanie kind of thing, I'm
not sure.

Q You're wearing a full beard and
mustache today, did you have facial hair that
time?

A I did have facial hair.

Q What kind of facial hair were you
wearing that day?

A Probably around the same.

Q How long were you standing

O. Hernandez

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waiting for your girlfriend?

A I don't recall.

Q Was it a minute, was it an hour,
can you estimate?

A I don't remember, I really don't
remember.

Q Did you have anything in your
hands during the time that you were waiting?

A Keys, I don't know.

Q Did you have a cell phone with
you?

A I guess in my pocket, maybe.

Q Where specifically in relation to
the car were you standing and waiting?

A I'm not sure. I might have went
for a walk during that period.

Q Do you recall where you went?

A No.

Q As you sit here today, do you
have an actual recollection of going for a
walk while you were waiting for Astrid?

A No.

Q Did you see anyone that you knew
during the time that you were waiting for

O. Hernandez

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Astrid?

A No, not that I recall.

Q Did anyone approach you during the time you were waiting for Astrid?

A No.

Q Did Astrid return before the incident began?

A Yes.

Q How long before the incident began did Astrid return?

A I don't recall.

Q Was it a second, a minute, an hour, can you approximate in any way?

A Before the incident?

Q Yes, let's get the chronology correct.

You drove from your house to John; is that correct?

A Yes.

Q You stayed down and she went upstairs; is that correct?

A Right.

Q She came down before the incident began or after?

O. Hernandez

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A Before.

Q How long before the incident began did she return?

A Like ten minutes.

Q Where did you spend those ten minutes?

A I'm sorry, if she came down, how long before the incident occurred had she been downstairs?

Q Exactly.

A Right, well, the incident -- oh, I would say maybe two minutes.

Q When she came downstairs, did you see her come down?

A She probably called me and she said I'm outside or whatever, so I just met up with her and we left.

Q Where had you parked the car?

A On East Tremont.

Q How far from John's place had you parked the car?

A About a block.

Q Do you remember the route you took to drive from the place where you parked

O. Hernandez

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the car to where you picked her up?

A I didn't, she met me at the car.

Q When she met you at the car, were you inside or outside the car?

A I don't recall.

Q What happened after she arrived at the car, what happened next?

A We got in and left.

Q Where was your intended destination?

A Home.

Q Did she have anything in her hands when she arrived at the car?

A Just the stuff that she brought down.

Q What was it?

A It was a bag.

Q Did you pull away from the curb?

A Yes.

Q After you pulled away from the curb, where did you go next?

A I pulled out of my parking spot, I went to make a U-turn, and this is where the incident began.

Q You were parked on East Tremont;

O. Hernandez

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is that correct?

A Yes.

Q East Tremont is a two-way street?

A Yes.

Q Is this a residential block,
commercial block or mixed?

A Mixed.

Q So, there is commercial usage on
that street?

A Yes.

Q Did you see any signs posed that
prohibited making a U-turn?

A No.

Q Are you aware of what the rules
are concerning making a U-turn?

A Yes.

Q What is your understanding of
what the rules are about making a U-turn on a
street like East Tremont?

A So, I may not be fully aware for
the laws of making U-turns.

Q Is there a double yellow line
that separates --

A Yes.

O. Hernandez

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Q Hold on. -- the two directions
of travel?

A Yes.

Q What direction did you initially
pull away before making the U-turn?

A Which direction?

Q North, south, east, west, do you
know?

A No.

Q If you hadn't made the U-turn,
what was the next cross street you would have
reached?

A Morris Park.

Q How far did you go before you
made the turn?

A Ten feet.

Q Did you do anything with respect
to the operation of the vehicle before you
made the U-turn?

A I don't understand.

Q Did you put a signal on, what did
you do, if anything?

A I think I signaled.

Q As you sit here today, do you

O. Hernandez

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have a recollection of signaling?

A No.

Q Did you put the headlights on?

A Yes.

Q Is it automatic or standard transmission?

A Standard.

Q In the direction you were initially traveling towards Morris Park, how many lanes of traffic are there; is there one lane on Tremont for cars to travel on heading towards Morris Park or is there more than one lane?

A I think it's one lane up until the intersection where it splits off. I think the cars that can turn go in one and you can go straight.

Q When you were parked waiting for Astrid to come back, were you parked against the curb or double parked?

A Against the curb.

Q Were you parked in a spot that permitted parking or were there any restrictions in that area?

O. Hernandez

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A Permitted.

Q Were you able to successfully complete the U-turn?

A Somewhat.

Q What happened when you made the U-turn?

A I accelerated the car and the back wheels spun out, so that's when the cop car saw me.

Q What gear were you in when you accelerated?

A First.

Q Was the clutch engaged when you attempted to accelerate or had you come off the clutch?

A It was engaged.

Q So, your foot was down on the clutch?

A Engaged, meaning the clutch was attached to the transmission, so power was going to the wheels.

Q What were the roadway conditions like that evening?

A Dry.

O. Hernandez

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Q Do you know what caused the rear wheels to spin?

A Aggressive driving.

Q What was aggressive about the way you were driving?

A I stepped on the gas a little too hard.

Q Is there a reason why you stepped aggressively on the gas?

A No.

Q Did you lose control of the vehicle?

A No.

Q Where was the police car that you observed after you spun the rear wheels?

A Coming towards me after the -- like at the intersection.

Q Which intersection?

A Of Morris Park and East Tremont.

Q Was the police car going towards the direction you wanted to go after the U-turn or was it going the way you were going before the U-turn?

A I made the U-turn and he was

O. Hernandez

29

1
2 coming towards the direction I wanted to go.

3 Q So, he would have been behind you
4 or were you coming head-to-head?

5 A When I pulled out the parking
6 spot he must have been behind me, and when I
7 made the U-turn he was now in front of me.

8 Q Was it a marked or unmarked car?

9 A Marked.

10 Q When the wheels spun, did they
11 smoke?

12 A I don't think so.

13 Q Did they leave a skid mark?

14 A No.

15 Q So, what happened next after you
16 saw the police car?

17 A I kept driving, and I didn't know
18 at first that he was trying to pull me over.

19 Q How far did you drive before you
20 realized that you were being pulled over?

21 A Probably when I got towards the
22 intersection.

23 Q Which intersection?

24 A Of Morris Park and East Tremont.

25 Q I'm a little confused. I thought

O. Hernandez

30

-- and I may have been, maybe you or maybe me, but let's try to clear it up.

I thought when you said when you pulled out of the parking space, before you made the U-turn, you were heading towards Morris Park?

A No.

Q What was the name of the street that you were heading towards before you pulled the U-turn?

A All the way down, that would probably be called Pelham Parkway.

Q So, when you got into the car, Morris Park would have been behind you?

A Yes.

Q How far away from the intersection of Morris Park had you parked the car?

A I would say 200 feet, 300 feet.

Q How much of that distance did you travel before you realized you were being pulled over?

A Well, I parked the car 200, 300 feet away and then drove an extra maybe 200,

O. Hernandez

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300 feet and then made the U-turn, so I started driving towards Morris Park now at this point and that's when I saw the cop.

Q I thought you said you went only ten feet before you made the U-turn?

A Oh, I drove a little bit and then ten feet -- when you're in a car, I don't know, it's hard to judge feet.

Q You have difficulty judging between ten and 200 feet?

A No, but in the car it's kind of irrelevant as to where he pulled me over or tried to.

Q That wasn't the question I was asking.

When I asked you before about how far you traveled before you made the U-turn, that is from the place you parked to the place where you made the U-turn, you told me you went ten feet?

A Okay, so ten feet, yes.

Q But now you said you went 200 feet before making the U-turn, coming back --

A No, it wasn't that much.

O. Hernandez

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Q How far from the intersection of Morris Park were you when you realized you were being pulled over?

A I had probably just gotten to the intersection.

Q What made you realize you were being pulled over?

A I saw him turn on his lights.

Q Did you actually see the lights come on?

A Yeah, in my rear view.

Q When you passed him after you made the U-turn, did he have lights on?

A No.

Q Did you keep him under observation after you passed him until the moment that you noticed the lights on?

A No.

Q Did you know he was behind you before you saw the lights?

A Well, yeah, I saw him after, but I didn't see any lights turn on.

Q What did you see, what did you observe the police vehicle do after you

O. Hernandez

33

passed him heading towards Morris Park?

A He turned on his lights.

Q But you testified previously that after you made the U-turn you saw the police officer and now you are heading in the opposite direction; is that correct?

A Right, and then he made the U-turn to come behind me.

Q You saw him make a U-turn?

A Yeah.

Q When you saw him make the U-turn where were you, how far from the intersection of Morris Park?

A I was probably right before the intersection.

Q How much time passed from when you saw him make the U-turn until you saw the lights come on?

A Probably right away.

Q When you saw the lights came on, you came to the conclusion that he wanted to pull you over; is that correct?

A Yes.

Q What, if anything, did you do

O. Hernandez

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1
2 after you came to the conclusion that he
3 wanted to pull you over?

4 A Can you repeat the question?

5 Q What, if anything, did you do
6 when you came to the realization or
7 conclusion that he was pulling you over?

8 A What do I think I did that he
9 wanted to pull me over for?

10 Q No. What did you do with your
11 vehicle when you came to the realization that
12 he was pulling you over?

13 A I tried to flee.

14 Q Why did you try to flee?

15 A Because I kind of freaked out. I
16 was with my girlfriend, I didn't want to get
17 pulled over.

18 Q Why didn't you want to get pulled
19 over?

20 A Because I didn't want to deal
21 with the ticket.

22 Q Did you have any tickets already,
23 any open tickets?

24 A No.

25 Q Did you have any open criminal

O. Hernandez

35

cases or violations against you?

A No.

Q Did you have any outstanding warrants?

A No.

Q What did you do to try to flee?

A Sped away.

Q What did you do to speed away?

A Sorry?

Q What did you do with the car, how did you do it? The last time you told me you said you were in first gear when you made the turn and the wheels spun. Did you shift between completing the U-turn and the point when you noticed the police officer?

A Well, after I made the U-turn I probably threw it in neutral as I rolled towards the intersection, and then when I saw him turn his lights on, when I tried to get away, I threw it in first again.

Q Why did you place it in neutral as you were coming up to the intersection?

A Because there was no reason to go into second, it was probably a red light.

O. Hernandez

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Q So, you shifted out of gear into neutral in preparation for stopping at the light at Morris Park?

A Yes.

Q Did that light change before you went through trying to flee?

A I don't recall.

Q How far did you flee?

A To Lurting Avenue and Sackett.

Q How far is that in terms of blocks?

A Probably four, five, six blocks.

Q So, you are on Tremont, East Tremont?

A Yes.

Q You realized you're being pulled over, you run, you go through the intersection of Morris Park; is that correct?

A Right.

Q After you get through the intersection of Morris Park, do you continue on Tremont?

A No, I turned onto Morris Park.

Q Which way do you turn?

O. Hernandez

37

A Right onto Morris Park.

Q Were you planning on turning right on Morris Park even before you realized you were being pulled over?

A Right, that is the way to my house.

Q How many blocks did you travel fleeing from the police on Morris Park?

A Maybe four.

Q What block did you travel to while fleeing from the police on Morris Park?

A I would say the block after Lurting Avenue.

Q Which is what?

A I don't recall.

Q When you reached the block after Lurting and fleeing from the police, what did you do next?

A When I reached the block after Lurting?

Q Yes.

A I went around that block.

Q Which way did you go, did you make a left or right?

O. Hernandez

38

1
2 A I made a right, a right, and
3 another right, I believe, back onto Lurting.

4 Q When you circled the block, were
5 you traveling in the correct direction for
6 traffic or were you against traffic?

7 A The only time that I went against
8 traffic was on Morris Park. There's a small
9 divider in the middle, and I went on the
10 other side of it for one block.

11 Q Is this before or after you went
12 around that block?

13 A This is before.

14 Q So, while you were fleeing the
15 police you crossed over the double yellow
16 line and traveled for one block in the wrong
17 direction; is that correct?

18 A Yes.

19 Q Were there any vehicles coming
20 towards you in the wrong direction as you
21 were traveling on the opposite side of the
22 roadway fleeing the police?

23 A No, it was very late.

24 Q What speed were you traveling on
25 Morris Park as you were traveling on the

O. Hernandez

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wrong side of the roadway?

A I don't recall.

Q Can you estimate the speed?

A Maybe thirty.

Q How much horse power does the
240ZX have?

A 155.

Q What gear were you in as you were
traveling on Morris Park in the wrong way?

A I cannot remember details like
that.

Q Was your girlfriend saying
anything during this?

A Not that I remember.

Q Did she ask you to stop?

A No.

Q Did she encourage you not to
stop?

A No.

Q Were you saying anything?

A I think I told her don't worry,
we're almost home.

Q Where were you when you told her
don't worry, we're almost home?

O. Hernandez

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1
2 A Probably when we got to the block
3 after Lurting.

4 Q What was the purpose of telling
5 her we're almost home?

6 A Oh, because the distance between
7 me and the police vehicle was decreasing.

8 Q So, you thought you would outrun
9 him?

10 A Yes.

11 Q You thought you would be able to
12 get away and get home?

13 A Yes.

14 Q Did the officer follow you onto
15 the wrong side of the road when you jumped
16 over the double yellow line and went across
17 the median?

18 A I don't recall.

19 Q Did you actually have to drive
20 over the median divider to get to the other
21 side of the road?

22 A I'm sorry, median divider?

23 Q I thought you said there was --

24 A There's a gate separating from
25 one side to the other, but before, like on

O. Hernandez

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East Tremont, you can -- so, if this is Morris Park and this is East Tremont, this is the gate. You can either go this way, the proper way, or around the gate.

Q The gate, what is that, like a divider?

A It's just a gate, it's like a black --

Q Fence, is it a fence?

A Fence.

Q A gate is something you open and close.

A It could be a fixed gate, also.

Q So, this gate runs --

A It's a fence.

Q This fence divides the two ways of traffic --

A Only for that block.

Q So, you went around the beginning of this fence?

A Yes.

Q You made a right off of Morris Park. Do you know the name of the street you made the right off of?

O. Hernandez

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A No, I don't.

Q When you made a right off of Morris Park onto that street to go around the block, did you see the police officer?

A When I made the right off of Morris Park after I finished, I completed that street, he -- yes, he was like towards the -- I would say a quarter of the way up the block.

Q What distance separated you from him on that street you made the right onto when you were fleeing from him?

A Like I said, while I was at the end of the block he might have been a quarter of the way up the block.

~~Q When you were at the far end of the block?~~

A Yes.

Q Was there a traffic control device at the next intersection you came to?

A The only -- meaning, stop sign or light?

Q Stop sign or light, was there a stop sign or light at that intersection?

O. Hernandez

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1
2 A At that intersection, no, but
3 back when I came around the block to Morris
4 Park there was a light.

5 Q Did you stop at that light?

6 A No, I think -- I believe it was
7 green at the time.

8 Q When you made the first right off
9 of that street, you went one block? I'm
10 talking about the move that you made to go
11 around the block. You said you made a right
12 onto the street and you went right, a right,
13 and a right?

14 A Right.

15 Q Where did you end up back at?

16 A Now I'm on Lurting.

17 Q Is Lurting a one-way or two-way
18 street?

19 A It's a one-way street.

20 Q Were you going in the correct
21 direction?

22 A Yes.

23 Q When you got around to Lurting,
24 did you see where the police officer was?

25 A I think when I got to the end of

O. Hernandez

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1
2 Lurting he was at the beginning of the
3 street.

4 Q One block away?

5 A A block away.

6 Q When you got to the end of
7 Lurting, was that before or after you told
8 your girlfriend don't worry, we're almost
9 home?

10 A I don't recall.

11 Q When you got to the end of
12 Lurting, what happened next?

13 A The rest of the trip was
14 straight.

15 Q On Lurting?

16 A Yes.

17 Q How many blocks did you continue
18 to drive on Lurting trying to evade the
19 police?

20 A Morris Park, Pierce, and then
21 Sackett, so three.

22 Q Did you see the police officer
23 again as you were traveling along Lurting
24 after the first time you just told me about?

25 A I don't know, I wasn't looking

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back too much.

Q What speed were you traveling?

A I don't know.

Q Was it more or less than thirty miles per hour?

A At the time of the crash, it was probably around twenty miles an hour.

Q So, you crashed your car?

A Yes.

Q What caused you to crash your car?

A My brakes, I think, locked up.

Q Why did you apply the brakes?

A To slow down to make the turn.

Q Onto what street?

A Sackett.

Q Was the roadway dry?

A I'm not sure. At that point, I believe it was dry.

Q Were you turning right or left on Sackett?

A It's a one-way, right.

Q Did you down shift or did you just brake?

O. Hernandez

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A Both.

Q What gear were you in and what gear did you shift down into?

A I was probably at three, and I downshifted to second.

Q What's the maximum speed that you feel you can travel in third gear on your car?

A I'm not sure.

Q When you applied the brakes, what happened to the vehicle?

A After slowing down the wheels locked up, I guess, in the front and it was just sliding.

Q In which direction?

A Straight.

Q How far did it slide?

A I'm not sure, I don't know. I don't want to judge.

Q Were you wearing a seat belt?

A Yes.

Q Was your girlfriend wearing a seat belt?

A Yes.

O. Hernandez

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Q Did your car come into contact with something?

A The barrier, like a concrete barrier.

Q Where was the concrete barrier?

A Right at the end of the block, because Sackett --

Q Is a T?

A Yeah, it's a T. On the other side of the barrier is a railway, so there's barriers there.

Q What part of your vehicle came into contact with the concrete barrier as you were fleeing the police?

A The front.

Q How would you describe the impact between the front of your vehicle and concrete barrier; light, medium, heavy or something else?

A Medium to heavy.

Q Did your body, as a result of the contact with the concrete barrier, move in any direction?

A Yeah.

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Q Which way did it move?

A Forward.

Q Did you strike anything on the inside of the vehicle?

A No.

Q Were you bleeding following the incident?

A No.

Q Did you feel any pain in any part of your body after striking the concrete barrier?

A No.

Q Was your girlfriend injured in the accident?

A No.

Q Did she make any complaints to you?

A No.

Q What did you do after you ran into the concrete barrier?

A I checked to see if my girlfriend was okay. After I saw that she was, I undid my seat belt, I got out of the car, and at that point I saw the cop car coming towards

O. Hernandez

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my car.

Q Did it have lights and sirens on?

A Yeah.

Q Was it one police car or more than one that you saw coming?

A One police car.

Q Was it the same one you had been trying to avoid?

A Yes.

Q How long did this go on that you were trying to evade this officer?

A Just a brief few minutes.

Q What does a few minutes mean to you?

A Maybe the whole thing, maybe a minute-and-a-half, two minutes.

Q So, in a minute-and-a-half to two minutes you traveled down Tremont, up Morris Park, around the block, across Lurting, and you hit a barrier?

A Yeah, around.

Q Can you estimate the speed you were traveling during that time?

A No, I can't.

O. Hernandez

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Q How far away from you was the officer when you noticed him after getting out the car after crashing it?

A Probably like halfway down the block.

Q Half a block away?

A When I got out of the car he was about half a block away.

Q What, if anything, did you do when you saw the police officer?

A I got down on my knees and put my hands behind my head and just waited.

Q Why did you do that?

A Well, because I didn't want the officer to think I had a weapon on me or any other reason to use unnecessary force.

Q Is this how you expected this to end, that you would be pulled over, down on your knees in the street?

A Absolutely not.

Q How would you expect it to end?

A Pull into the driveway and turn the car off and just go home.

Q Did you think the police officer

O. Hernandez

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would have recorded your license plate?

A I wasn't concerned with that at the time.

Q You just didn't want a ticket?

A Right.

Q Where was your girlfriend when you got out of the car and got down on your knees and put your hands behind your head?

A In the vehicle.

Q Was she saying anything?

A She probably asked me if I was okay.

Q After you got out of the car, was she saying anything?

A Yeah, I think I heard her say if I was okay.

Q What happened next after you got down on your knees?

A Well, I was facing away from the officers, but I turned around and one of them -- I saw one of them coming towards me.

Q Did you hear the car stop, the police car stop?

A Yeah.

O. Hernandez

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Q So, when you got down on your knees, you placed your back towards the officers?

A Right.

Q Is there a particular reason you did that, you placed your back towards the officer rather than facing the direction they were coming from?

A I wanted them to have a clear view of my hands, so I thought it would be easier for them. I just wanted to make their job a little simpler, to show them I was complying.

Q Finally complying?

A At that point, yes.

Q Had they said anything to you over the radio or over the loud speaker?

A No.

Q Did you consider that when you took that position with your back towards the police that it could be perceived as you were attempting to prevent them from seeing what was in front of you?

A No, that wasn't the case.

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Q I know you're telling me that wasn't what was in your mind, but would you think it would have been better to face them when you were finally surrendering rather than put your back to them so they could have a clear view of your face, your expression, what you were doing as you were finally surrendering after this chase?

A I believe they had a clear view.

Q Of the back of you?

A My hands, probably the most important part.

Q But they would have had no idea what was on the ground in front of you or what might have been in your waistband or anything like that with your back to them?

A You can make the same argument as if my front was towards them, you know.

Q So, you got down on your knees, your back was facing the police officers, why did you turn around?

A No, I just wanted to see where they were with respect to my location.

Q Had they said anything to you

O. Hernandez

54

before you turned around?

A No.

Q Did you get up to turn around or did you just turn your head?

A I just turned my head.

Q Which way did you turn, left or right?

A I don't recall.

Q What did you see when you turned?

A I saw the officers coming towards me.

Q How many officers?

A Two.

Q What are their names?

A I don't know.

Q Were they men, women, one of each?

A Men.

Q Can you describe them for me?

A Both of them heavyset. Not fat, but built. One was white and one was black.

Q Do you know who got out of the driver's side of the vehicle?

A No, I don't remember.

O. Hernandez

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Q What happened next when you turned around and saw them coming?

A I just turned back.

Q And then what happened?

A The first person that came onto me was the white officer.

Q Did either of them say anything to you before they got up to you?

A I'm sorry, before?

Q Before they came over to you, before they reached you, did any of them say anything?

A No.

Q When you turned around to look, were they walking, running or something else towards you?

A I don't recall.

Q Did they have anything in their hands?

A No, I don't recall.

Q You said that the white officer got to you first?

A Yes.

Q What happened after the white

O. Hernandez

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officer reached you?

A He slammed me down to the floor.

Q How did he do that?

A From what I could feel, he put one knee -- one of his knees on my back, and with his hands he pushed my face into the ground.

Q Did you say anything to the officers before you were put down on the ground?

A No.

Q Where was your girlfriend when this happened?

A In the vehicle.

Q How far away from the vehicle were you?

A Right like next to my driver's side door.

Q Did you say or do anything when the officer put you own on the ground?

A No.

Q What happened next after the officer pushed you down onto the ground?

A After he slammed my face into the

O. Hernandez

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ground, he put my hands behind my head,
behind my back.

Q How did he do that?

A He grabbed one of them first and
yanked it to the back, and then he grabbed
the other one and yanked it to the back,
because while he slammed my face down my
hands were behind my head, so I really
couldn't break my fall. So, I just slammed
into the ground.

Q Was there anything keeping your
hands behind your head when he put your face
down; in other words, was anyone holding your
hands?

A Yes, the officer that took me
down, because he kind of put his hands, like,
kind of right behind me.

Q So, the white officer grabbed
your hands and placed you in cuffs?

A Yes, but either -- I don't recall
when, but I know after my hands were behind
my back the other officer got on top of me as
well and he punched me about seven to ten
times really fast. I couldn't remember how

O. Hernandez

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many times.

Q Where did the punches land?

A On my right side, on my ribs.

Q What did he punch you with?

A I think his hands.

Q Did he say anything before he did it?

A He was just cursing. I don't remember exactly what he was saying, but he was just talking crap.

Q What was he saying?

A I remember him saying -- after he punched me, I remember him getting up and the cuffs were on me at this point, and he got up and he kicked me in the face, then like with his foot pushed my face into the ground and said stupid mother fucker.

Q Before you were handcuffed, when you were on the ground and this officer punched you, did either of them say anything to you?

A I don't recall, it happened fast.

Q Did you say anything?

A No, I didn't say anything the

O. Hernandez

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entire time.

Q Where was the white officer when the black officer was punching you?

A I think he was -- the white officer was getting off of me and he, the other one, got on top of me.

Q Did they say anything to each other?

A No, I don't recall.

Q After you were punched seven or ten times in the right rib, what happened next?

A The officer got up and walked around and stomped on my face.

Q What did he do to stomp on your face?

A I'm sorry?

Q What did he do, what did he stomp on your face with?

A His boot.

Q Where on your face did he stomp on you?

A Like, he walked up to me, kicked me, lifted his foot up and then stomped --

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O. Hernandez

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like, pushed my face down into the ground.

Q That's when he called you a
stupid mother fucker?

A Yes.

Q Where was the white officer when
the black officer did this?

A I couldn't see him.

Q When were you put in handcuffs?

A When?

Q Yes.

A While I was facedown on the
ground.

Q Before or after you got punched
in the ribs?

A I don't recall. It was while my
hands were behind my back, that's as much as
I do recall.

Q Did you say or do anything when
the officer kicked you in the face and held
your face down with his foot and called you a
stupid mother fucker?

A Did he what?

Q Did you say or do anything --

A No, I didn't.

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Q Did the officers say anything to each other?

A I don't recall that.

Q Did the white officer say anything to you?

A No, he didn't say anything to me.

Q What happened next?

A They picked me off the ground or whatever and the black officer -- I had my college ID on my neck --

Q Why did you have a college ID on your neck?

A I had school that day, I believe.

Q Had you been wearing it the whole time?

A Not all day.

Q What happened next after the police officer picked you up off the ground?

A The black officer yanked the college ID off of my neck.

Q Did he say why he was doing that?

A No.

Q What happened next?

A After the ID broke, that's it.

O. Hernandez

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They put me in the police car, I believe, and then that was it.

Q Where were you taken?

A To the precinct.

Q Which precinct?

A I think the one on -- I'm not sure. I think it's either 48th or 49th.

Q Where was your girlfriend after the police approached you?

A She was sitting in the driver's seat the whole time -- I mean the passenger.

Q Did she record any of this?

A No, but she had a clear view of what happened.

Q Were there any witnesses to the incident, other than the participants and your girlfriend?

A No, it was late.

Q Did your girlfriend ever tell you from that moment until today what she did after the police took you away?

A No, they told her -- they asked her if she needed, like, to go to the hospital, I think. I don't remember. I do

O. Hernandez

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remember she came to the precinct, though.

Q Did you hear the police ask her if she needed medical assistance or is this something she told you happened?

A I think she told me, but I don't remember exactly what she said.

Q Did she require medical assistance?

A No.

Q Was she injured in the accident at all?

A No.

Q Did the officers say anything to you on the ride to the precinct?

A No, I can't remember.

Q Did you say anything to the officers on the ride to the precinct?

A They just asked -- the officers that took me to the precinct were not there same officers that made the arrest and the assault.

Q Who took you to the precinct?

A I don't remember their names, it was a Spanish cop.

O. Hernandez

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Q When did they arrive at the scene?

A Maybe five minutes in.

Q Where were you when the other officers arrived, standing on the ground?

A I was probably standing at that point.

Q Was this before or after you claim the officers hit you in the ribs and slammed your face into the ground?

A This was after, they arrived after.

Q Did you hear the police that arrived say anything to the police that pulled you over?

A No.

Q Did you hear the police that pulled you over say anything to the new police that arrived?

A No.

Q What, if anything, did the police who transported you to the precinct say either to you or to each other or over the radio on the ride to the precinct?

O. Hernandez

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A Nothing, just the same thing.
They asked why, and I just told them that I
didn't want to get a ticket, and that was the
end of the conversation.

Q What do you mean they asked why?

A They asked why did I run, why did
I try to run.

Q What did you tell them?

A I just wanted to avoid getting a
ticket.

Q Did they say anything else on the
ride to the precinct?

A No.

Q How long were you at the
precinct?

A Until the morning.

Q It was already about 2:30 in the
morning when this occurred --

A Until may 6:00 something a.m.

Q At 6:00 a.m. where did you go?

A Central.

Q Central Booking?

A Yes.

Q During those hours you were at

O. Hernandez

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the precinct, where were you held?

A In the cell there.

Q Were you fingerprinted?

A Yes.

Q Were you photographed at the precinct?

A I believe so.

Q Did you make any complaints or ask for anything while you were at the precinct?

A No.

Q Were you bleeding anywhere?

A Yes.

Q Where?

A On my face.

Q Where on your face?

A I had a few gashes and cuts on my face.

Q Where were they located?

A I have the photos.

Q Can you recall?

A Forehead, on my eyebrow.

Q Which eyebrow?

A I believe the left. I have to

O. Hernandez

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look at the photos.

Q Do you have the photos?

MR. COHEN: I have a copy
for you.

MS. SABBATINO: Mark these,
please.

(Photographs were marked as
Respondent's Exhibits A through M
for identification, as of this
date.)

Q Mr. Hernandez, your attorney has
provided us thirteen black and white copies
of photographs. We marked them as Exhibits A
through M.

Were all these photographs taken
at the same time?

A Yes.

Q When were these pictures taken?

A The next day.

Q When the next day?

A I spent -- so, when I arrived to
Central Booking I spent the entire day there,
and I probably came home around 9:00 p.m.
that night.

O. Hernandez

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1 Q So, that would be 9:00 p.m. --

2 A I'm not exactly sure on the time,
3 I just know it was nighttime.

4 Q That would have been the 1st of
5 December?

6 A I guess if there's no November
7 31st.

8 Q There isn't. Evening, nighttime
9 on the 1st you arrived home; is that correct?

10 A Yes.

11 Q So, when were the pictures taken
12 in relation to you arriving home?

13 A Maybe an hour after.

14 Q Who took the pictures?

15 A I took most of them, and I think
16 my mother took some of them, I'm not sure
17 which ones.

18 Q What did you take them with?

19 A I think either it could have been
20 -- I think it was just a point and shoot
21 Canon.

22 Q Did you take any other
23 photographs to depict any bodily injuries
24 that you claim were as a result of your
25

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encounter with the police, other than the thirteen that are here today?

A No, just my chipped tooth, but I didn't take a photo of it because it would always be there.

Q Which tooth got chipped?

A (Indicating).

Q You can't point, you have to describe it in words.

A The left corner of my front right upper.

Q So, other than the chipped tooth and the injuries that are depicted in these photographs, were there any other visible injuries on your body?

A My mother said that my side was swollen, and that's about it.

Q Which side?

A The side that I got punched on.

Q Which side is that?

A My right side.

Q Did you observe that?

A No, I was just in pain on the right side for maybe two months after that

O. Hernandez

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happened. I did go to the doctor.

Q We'll get to that in minute.

Before these photographs were taken, had you received any medical treatment?

A No.

Q Including first aid or anything like that?

A At Central Booking the medic there changed some bandages on my forehead.

Q Who put the bandages there to begin with?

A I think the ambulance that came while I was in the cop car. They came and I came out and they asked whatever and they just bandaged whatever.

Q So, how long did you remain at the scene in the police car before you were driven to the precinct?

A Ten, fifteen minutes.

Q Who called for the ambulance?

A I don't know.

Q Did you make any complaints to the ambulance attendants?

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A No.

Q Did they take your name?

A I don't recall.

Q What did the ambulance do for you
at the scene?

A I'm trying to recall if the
bandages actually got put at the scene there
or at the medical office thing.

Q What medical office thing?

A At the Central Booking.

Q Because you had said that they
changed bandages at Central Booking.

A It was a long time ago, so I
can't exactly recall if the bandages were
there already or whether they were open
wounds at the time. Now that I think about
it, I believe the bandages were initially put
on at Central Booking.

Q You're still wearing the bandages
when you were released from Central Booking?

A Yes, I took them off at home.

Q Did you replace them with
anything?

A I probably -- I don't remember.

O. Hernandez

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Q Did any officer say anything to you while you were at the precinct until 6:00 a.m.?

A No.

Q Did you hear them talking about you?

A No.

Q You said your girlfriend came to the precinct, how do you know that?

A The officer did tell me that she was here, and I think I told her to go home or something, that there was anything she could do, so for her to just go home.

Q Did she tell you anything she did while she was at the precinct?

A No, not that I recall.

Q What were you charged with?

A Initially, reckless endangerment -- no, reckless driving.

Q What was the resolution of those charges?

A Reckless driving.

Q What do you mean? How did the charges resolve, are they still open, have

O. Hernandez

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they been concluded?

A Are you asking what I was -- I'm not sure.

MR. COHEN: Are you asking what he pled guilty to?

Q Did you plead guilty to something?

A Did I? I don't know. I don't remember the exact terms for it.

Q The question I asked you was what were you charged with. You were charged with reckless driving, that you recall, correct? Just listen to my question. You were charged with reckless driving, correct?

A Yes.

Q Those charges have been taken care of, they are no longer open, correct?

A Right.

Q How did those charges get taken care of?

A I had to go to court.

Q What was the resolution; were the charges dismissed, did you plead guilty to something, did you go to trial, what

O. Hernandez

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happened?

A Reckless -- I got a reckless driving summons and a \$200 fine.

Q Is that something that occurred after a judge heard evidence or is that something that you agreed to accept to resolve the charges?

A I agreed to accept.

Q When were the charges resolved?

A I don't remember the court date.

MR. COHEN: If you want the information --

MS. SABBATINO: You got it?

MR. COHEN: February 6, 2013. I can also tell you, just to make it clear, when he got to the charges that were filed, it included other charges and he pleaded guilty to reckless driving.

Q Did you have an attorney who represented you through the criminal case?

A Starting when, beginning when?

Q Starting from when you first were

O. Hernandez

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brought to court?

A I believe the initial lawyer that night at Central Booking was something Gardener.

Q Was that person assigned to you or did you hire that person to represent you?

A I hired him.

Q Did you pay him?

A Yes.

Q How much did you have to pay your criminal defense attorney?

A I don't recall, my mother paid for it.

Q Does she expect you to pay her back?

MR. COHEN: We're not asking for money for that.

MS. SABBATINO: It's unclear whether that's part of it or not.

MR. COHEN: No, we're not contesting the arrest. It's excessive force, that's the only thing we're alleging.

Q While you were in Central

O. Hernandez

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Booking, did any police officers physically do anything to you?

A Physically do anything to me? Just at that one point when I went to the medic.

Q When they dealt with your wounds?

A Yes.

Q Did any officers say anything to you about the events of that evening?

A No.

Q Did you ask for anything while you were in Central Booking?

A No.

Q Did anything happen to you while you were there, any problems with any of the other men who you were being held with?

A No.

Q After you returned home, at any time, did you receive any medical treatment?

A No. Actually, the night, yes. The night I went home, later on that night, I went to the emergency room.

Q When did you go to the emergency room?

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A That same night, I believe.

Q How long after being home did you go to the ER?

A Maybe two hours.

Q What emergency room did you go to?

A Einstein Hospital.

Q How did you get there?

A I took a cab.

Q Did you go alone?

A Yes.

Q What complaints did you make to the physicians or staff at Einstein when you arrived that night?

A That I had a lot of pain in my side and my ribs.

Q Did you complain about anything else, other than the pain in the right ribs?

A I had pain my forehead.

Q Did you complain about anything else?

A The cuts, the gashes, and especially the lump on my forehead was hurting.

O. Hernandez

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Q Did they ask you how you received those injuries?

A I don't recall if they asked me.

Q Did you tell them?

A I don't remember having a conversation about that with them. Yes, okay, I told them it was the police officers that did do that to me and that was it.

Q Did they take any X-rays?

A Yes.

Q What part of your body did they X-ray?

A They did a CT scan on my head and X-ray on my side.

Q What were the results of the CT scan for your head?

A If I remember the exact term, severe mucosal thickening, that's what was on --

Q Where was the mucosal thickening located?

A It was in my sinus.

Q Had you had sinus problems before?

A No, not that I know.

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Q Did you have a primary care doctor before this incident happened?

A No.

Q Had you ever had any ear, nose or throat problems before?

A When I was a child.

Q What kind of ear, nose and throat problems did you have as a child?

A I had tubes in my ear.

Q Did the doctors at the hospital give you an opinion or tell you what they thought caused the severe mucosal thickening?

A Not that I recall.

Q Did they prescribe treatment for the severe mucosal thickening?

A No.

Q Did they discuss with you the results of the X-rays to your ribs?

A No, I think it was just bruising.

Q Did they prescribe any treatment for the bruising to your ribs?

A No.

Q Did they give you instructions to return to the hospital at any time?

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A No, I think they just gave me a prescription for painkillers.

Q Did you have it filled?

A I can't remember.

Q Did you take any medication for pain at any time after this incident?

A I took a few painkillers.

Q Just a few in total?

A One or two.

Q In total?

A That night.

Q I'm talking about from then to now.

A I don't remember.

Q Did you return to Einstein Hospital for follow-up treatment at any time?

A No.

Q Have you received any medical treatment anywhere else, other than at Einstein Hospital?

A No.

Q So we're clear, the only medical treatment you've received since the incident occurred is going to the ER the night it

O. Hernandez

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happened?

A Right.

Q Were you confined to your bed for any period of time after the incident?

A No, but I had limited mobility compared to normal.

Q What limitations on your mobility did you have?

A It was hard to extend my arm up because of the pain I had in my side.

Q Which arm?

A My right arm.

Q How long did that last for?

A It didn't fully go away until, I would say, a month-and-a-half to two months I had the pain on my side.

Q What other, if any, limitations in mobility did you experience following this incident?

A That's it.

Q Were you confined to your home for any period of time after the accident?

A No.

Q Were you in school at the time

O. Hernandez

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1
2 the accident happened, had you enrolled in
3 the fall semester of last year?

4 A Yes.

5 Q Was school over with already by
6 the time the incident happened?

7 A No, I remember being in school
8 with my facial marks.

9 Q Did you miss any time from
10 school?

11 A Maybe just a day or two.

12 Q How many classes were you taking
13 in the fall semester of last year?

14 A I believe three to four.

15 Q Have you seen any of the officers
16 who were involved in this incident since that
17 time?

18 A No.

19 Q Did you contact the Internal
20 Affairs division of the police department
21 regarding this incident?

22 A No.

23 Q Did you contact the Civilian
24 Complaint Review Board?

25 A No.

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Q Did you place any information about this incident online through social media?

A No.

Q Did anyone that you know of place any information online through social media about this incident?

A No.

Q How long did the abrasions and lacerations take to heal?

A I don't recall, a while.

Q What does a while mean to you?

A A month, maybe more for the bigger ones.

Q Do you have any residual scarring anywhere?

A I had a scar. I'm not sure if it's still there, but I had a small scar on my eyebrow where one of the cuts were.

Q Did you require any stitches?

A No.

Q Did anyone suggest you needed stitches?

A My mother, but I don't think so.

O. Hernandez

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Q Any medical personnel?

A No.

Q When was the last time you noticed whether or not the scar in your eyebrow is still present?

A I haven't looked, but I'm not sure.

Q Other than the scar on your eyebrow, do you have any other marks on your body which --

A The chipped tooth.

Q Have you been to the dentist?

A I have, but not for that reason.

Q Did you ask the dentist if there's anything that needed to be done because of the chipped tooth?

A No.

Q Have you ever brought a case or claim against the City of New York, other than this one?

A No.

Q Have you ever brought a case or claim against the State of New York?

A No.

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Q Did you incur any expenses as a result of the incident?

MR. COHEN: As a result of the police misconduct or the case itself?

Q Did you incur any expenses as a result of your contact with the police that night, your arrest?

A Can you elaborate a little more, can you give me an example?

Q Medical expenses, pharmacy expenses, transportation expenses or anything like that?

A No, I don't believe so.

Q Did you have full coverage on your car?

A No, liability.

Q Were any photographs taken to show the car in the position it ended up after you crashed it into the concrete barrier?

A No.

Q Do you know how your girlfriend left the scene?

O. Hernandez

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A No, I don't remember.

Q Did anyone that you knew come to
the scene?

A No.

MS. SABBATINO: The City
would request that Mr. Hernandez
execute for us today an
authorization to obtain the
medical records from Albert
Einstein College of Medicine, as
well as an authorization to
obtain records from the Criminal
Justice Authority with respect to
the prosecution of this case.

MR. COHEN: You have the
forms?

(Continued on next page to
accommodate jurat.)

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MS. SABBATINO: We do have
the forms.

MR. COHEN: Okay.

MS. SABBATINO: Thank you.
No further questions.

-o0o-

(Whereupon, the examination
of Omar Hernandez was concluded
at 3:05 p.m.)

OMAR HERNANDEZ

Subscribed and sworn to
before me this _____ day
of _____, 2013.

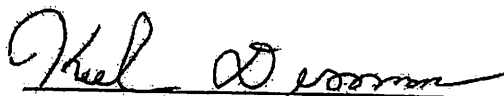
NOTARY PUBLIC

C E R T I F I C A T E

I, Koel Dressman, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness(es) whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script, appearing to read "Koel Dressman", is written over a horizontal line.

KOEL DRESSMAN